

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

ORIGINAL

JAN - 5 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b))	
Table of Allotments)	MM Docket No. 98-198
FM Broadcast Stations)	RM - 9304
(Cross Plains, Texas et al.))	

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

JOINT REPLY COMMENTS

First Broadcasting Management, LLC, KCYT-FM License Corp., Gain-Air, Inc., ("FBM") and WBAP/KSCS Operating, Ltd. and Blue Bonnet Radio, Inc. ("WBAP") (collectively "FBM/WBAP"), jointly by their respective counsel, hereby oppose Commission acceptance of the Counterproposal filed by Gulfwest Broadcasting Company and Sonoma Media Corporation (collectively referred to as "Henderson").¹ The Henderson Counterproposal contains numerous legal and technical deficiencies which are fatal to Commission consideration.² In support hereof, FBM/WBAP states as follows:

1. Most notable of the various deficiencies is the violation of the Columbus, Nebraska 59 RR 2d 1185 (1986) policy of forcing three stations to change channels without their consent. Although Henderson originally included the consent of Station KBAL-FM, San Saba, Texas in its

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1. The other Counterproposal filed in this proceeding by Heftel Broadcasting Corporation, Metro Broadcasters-Texas, Inc., Jerry Snyder and Associates, Inc. and Hunt Broadcasting, Inc. is not in conflict with the Henderson Counterproposal.
 2. The Henderson Counterproposal conflicts with the FBM filing due to Henderson's expressed interest in Channel 272C1 at Cross Plains and FBM's proposal to substitute Channel 272C3 at Coleman, Texas. Henderson's Counterproposal conflicts with the WBAP Counterproposal in that Channel 272C1 at Cross Plains is short spaced to the WBAP proposal to substitute Channel 272C1 at Wichita Falls.

filing, that station has now withdrawn its consent in a separate filing to be submitted today. The purpose of the Columbus policy is to avoid implementation problems after the rule making proposal is granted. When more than two stations fail to agree in advance on the reimbursement amount and the timing of the channel and/or transmitter site changes, the Commission's resources can become overly burdened. For those reasons, FBM, on its part and WBAP, on its part, went to great lengths to assure themselves of the willingness and cooperation of every affected station involved in their respective proposals so that the implementation process can proceed smoothly. The Columbus policy serves a reasonable purpose and should be enforced.

2. Secondly, a review of Henderson's channel study for the substitution of Channel 281C2 at Mason, Texas indicates short spacings using the application sites of BK Radio and Foxcom, Inc. to Station KBAE on Channel 284C3, Llano, Texas. See Henderson Exhibits # 4B and 4C. Although the Commission deleted Channel 284C3 at Llano in MM Docket No. 95-49, that action is not yet final due, ironically, to the Petition for Reconsideration filed by Henderson in that proceeding. See Memorandum Opinion and Order in MM Docket No. 95-49 (DA 98-2564, released December 18, 1998).

3. Thirdly, to the extent Henderson is proposing the substitution of Channel 291A at San Saba rather than Channel 289A, Channel 291A is short spaced to a proposal to allot Channel 291A at Mason, Texas in MM Docket No. 97-244. See Henderson Exhibit # 7A. Henderson recognizes this short spacing and indicates that Channel 259A "has been counter proposed in Docket No. 97-244 at Mason, Texas." Henderson at Exhibit # 7A. However, in order to avoid being contingent on the outcome of another proceeding, Henderson should have submitted a channel study for Channel 259A at Mason and proposed that allotment as part of its Counterproposal. The Commission's policy in that regard is that "proposals are required to be capable of being effectuated at the time they are granted and cannot be contingent upon further action by third parties." Cloverdale,

Alabama, et. al., 12 FCC Rcd 2090, 2093 (1997). At this time, Henderson's proposal can not be effectuated without the final resolution of MM Docket No. 97-244 because no channel study was submitted by Henderson to show that an alternate channel works at Mason. By contrast, FBM/WBAP submitted channel studies for Channel 259A, 281A and 224A at Mason.

4. Fourth, Henderson proposes to change the community of license for Station KVCQ, Cuero, Texas to Luling, Texas (pop. 4,661 - 1990 U.S. Census) as its second local service. Cuero (pop. 6,700) does not currently have any other existing services. In Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989) recons granted in part, 5 FCC Rcd 7094 (1990), the Commission stated that one of the purposes to reallocate an existing station is whether the community would continue to have local service. Henderson cites no case law to support a smaller community receiving a second local service as a preferential arrangement even if Cuero were to be eventually served by another station during the pendency of this proceeding. Pursuant to Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982), the Luling proposal would fall under Priority 4, "other public interest factors." Certainly the smaller size of Luling compared to Cuero would, in the absence of any countervailing factors, cause the Commission to deny the reallocation. See e.g., Harrisburg and Albemarle, North Carolina, 7 FCC Rcd 108 (1992) *aff'd* 11 FCC Rcd 2511 (1996).

5. In addition, Henderson has not made the gain/loss showing typically required for a change in community of license. See e.g., Atlantic and Glenwood, Iowa 10 FCC Rcd 8074 (1995) and the showing that there would be five remaining services in the loss area. Ravenwood and Elizabeth, West Virginia, 10 FCC Rcd 3181 (1995). Under the current circumstances (a contested proceeding) Henderson should not be permitted another opportunity to provide this information. In Stamps, Arkansas 3 FCC Rcd 3644 (1988) the Commission stated that counterproposals must

contain all relevant information which allows the Commission to make the comparison between mutually exclusive proposals. The failure to submit relevant information is at the counterproponent's peril. The reasoning behind this requirement is to avoid unnecessary administrative proceedings so that opposing parties can reply to these showings at the proper time and avoid having the Commission to issue further requests for such information with replies to follow. Thus Henderson's failure to submit a gain/loss showing and a showing that five local services in the loss area will remain also makes Henderson's proposal defective.

6. Accordingly, for the above reasons, FBM/WBAP requests that the Commission deny acceptance of and dismiss the Henderson Counterproposal in this proceeding.

Supplemental Request

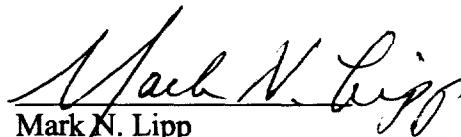
7. FBM and WBAP have determined that Channel 289A is available for substitution at San Saba for Station KBAL instead of Channel 291A. FBM and WBAP each submitted the statement of the licensee of Station KBAL, Equicom, Inc., consenting to the substitution of Channel 291A in their respective filings. It was noted that Channel 291A is short spaced to the pending proposal in MM Docket No. 97-244 to allot Channel 291A at Mason. Instead Channel 281A or 224A were proposed by FBM and by WBAP as substitutes should a channel be allotted to Mason. However, Channel 289A at San Saba will not require a different channel to be considered at Mason. See attached Engineering Statement. Therefore FBM and WBAP separately request that their respective proposals be amended to consider Channel 289A instead of Channel 291A as the substitute channel at San Saba. A revised consent statement from the licensee for both proposals is provided herein.

8. In addition the attached Engineering Statement provides a replacement exhibit for Figure 29 in order to correct the channel listed on the label to the figure.

Respectfully submitted,

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WBAP/KSCS OPERATING, LTD.
BLUE BONNET RADIO, INC.

By:

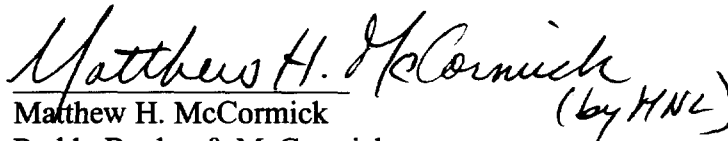


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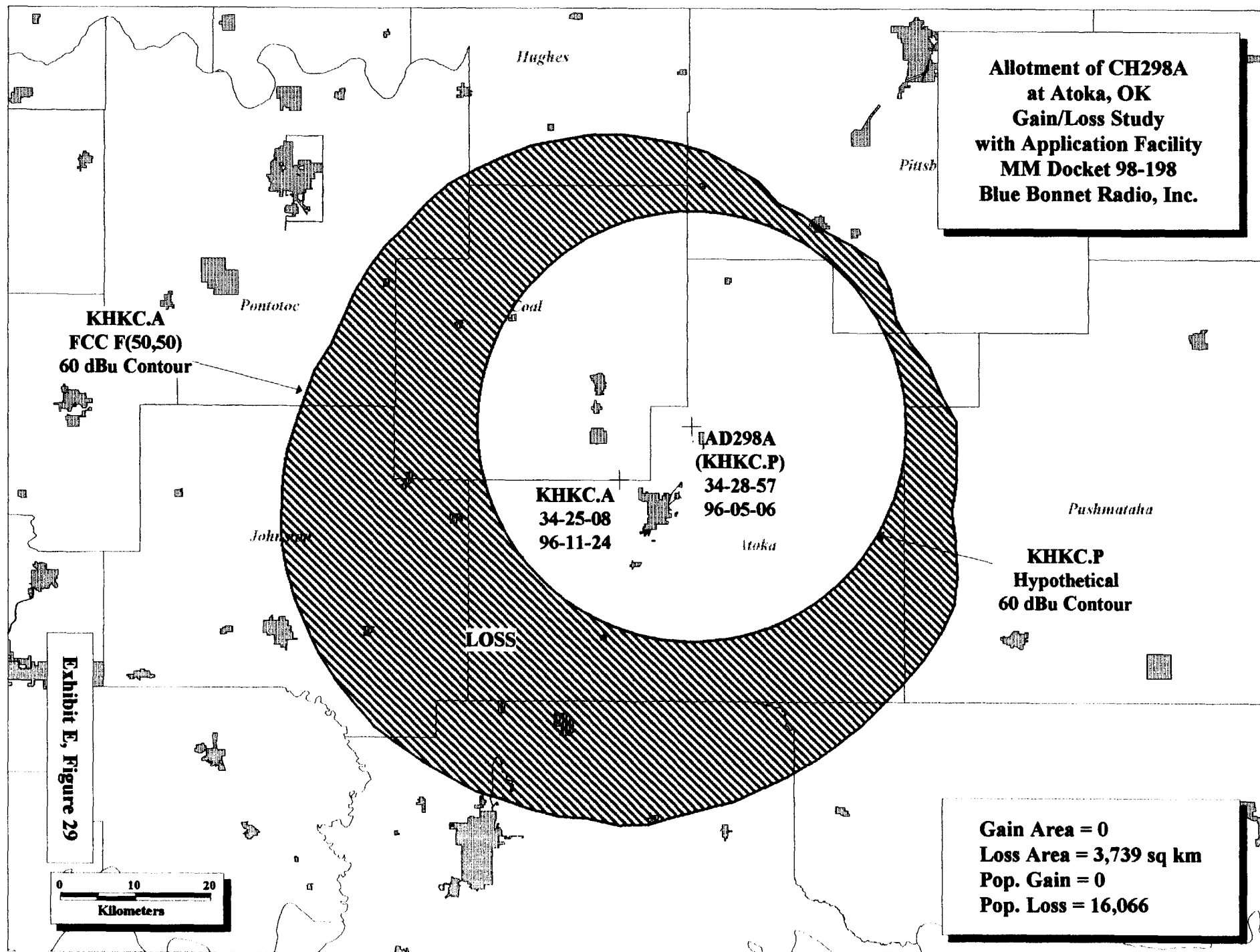
**Station KBAL
San Saba, Texas**

Equicom, Inc. ("Equicom"), licensee of Station KBAL, San Saba, Texas, hereby agrees to have Station KBAL's license modified to change channel from Channel 246A to Channel 289A at its current site. Equicom will file an application to implement the channel change should the Commission approve the amendment to the Table of Allotments. Equicom understands that this statement may be used in a filing with the Federal Communications Commission and hereby authorizes its use for that purpose.

I verify that this statement is true and accurate to the best of my knowledge, information and belief and is made in good faith.

EQUICOM, INC.

By: Le Bennett Spring
Its: Chief Operating Officer



CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy & Bacon, do hereby certify that I have on this 5th day of January, 1999 caused to be mailed by first class mail, postage prepaid, copies of the foregoing **"Joint Reply Comments"** to the following:

- | | | | |
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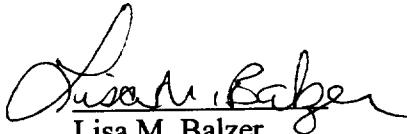
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